

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN SENATE MAY 4, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 421

Introduced by Senator Hancock

February 25, 2015

An act to amend Section 7873 of the Labor Code, relating to refineries.

LEGISLATIVE COUNSEL'S DIGEST

SB 421, as amended, Hancock. Refineries: turnarounds.

Existing law requires a petroleum refinery employer to, every September 15, submit to the Division of Occupational Safety and Health information regarding planned turnarounds, as defined, for the following calendar year and provide onsite access to the division for inspection. Existing law establishes procedures for the public disclosure of turnaround information designated a trade secret, including authorization for a petroleum refinery employer to seek a declaratory judgment to prevent disclosure. Existing law requires a court to award attorney's fees to a party that prevails in an action to compel or prohibit the division from disclosing turnaround information.

This bill would delete the requirement that a person requesting the release of the above-described information, or a petroleum refinery employer seeking to prevent disclosure, name the other as a real party in interest in an applicable action. The bill would delete the requirement that a person requesting release of this information provide notice of an action to compel disclosure to the petroleum refinery employer and would instead require the division to provide that notification. The bill

would instead authorize the person to intervene in a petroleum refinery employer's declaratory relief action and require the court to permit that person to intervene. The bill would also require the court to allow the petroleum refinery employer to intervene in that action. The bill would also delete the requirement that the court award attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7873 of the Labor Code is amended to
2 read:

3 7873. (a) As used in this section, "trade secret" means a trade
4 secret as defined in subdivision (d) of Section 6254.7 of the
5 Government Code or Section 1061 of the Evidence Code, and shall
6 include the schedule submitted to the division pursuant to
7 subdivision (b) of Section 7872 of this code, and the scheduling,
8 duration, layout, configuration, and type of work to be performed
9 during a turnaround. Upon completion of a turnaround, the
10 scheduling and duration of that turnaround shall no longer be
11 considered a trade secret. The wages, hours, benefits, job
12 classifications, and training standards for employees performing
13 work for petroleum refinery employers is not a trade secret.

14 (b) (1) If a petroleum refinery employer believes that
15 information submitted to the division pursuant to Section 7872
16 may involve the release of a trade secret, the petroleum refinery
17 employer shall nevertheless provide this information to the
18 division. The petroleum refinery employer may, at the time of
19 submission, identify all or a portion of the information submitted
20 to the division as trade secret and, to the extent feasible, segregate
21 records designated as trade secret from the other records.

22 (2) Subject to subdivisions (c), (d), and (g), the division shall
23 not release to the public any information designated as a trade
24 secret by the petroleum refinery employer pursuant to paragraph
25 (1).

26 (c) (1) Upon the receipt of a request for the release of
27 information to the public that includes information that the
28 petroleum refinery employer has notified the division is a trade
29 secret pursuant to paragraph (1) of subdivision (b), the division

1 shall notify the petroleum refinery employer in writing of the
2 request by certified mail, return receipt requested.

3 (2) The division shall release the requested information to the
4 public, unless both of the following occur:

5 (A) Within 30 days of receipt of the notice of the request for
6 information, the petroleum refinery employer files an action in an
7 appropriate court for a declaratory judgment that the information
8 is subject to protection—~~under~~ *as a trade secret, as defined in*
9 subdivision—~~(a)~~ *(a)*, and promptly notifies the division of that action.

10 (B) Within 120 days of receipt of the notice of the request for
11 information, the petroleum refinery employer obtains an order
12 prohibiting disclosure of the information to the public and promptly
13 notifies the division of that action.

14 (3) This subdivision shall not be construed to allow a petroleum
15 refinery employer to refuse to disclose the information required
16 pursuant to this section to the division.

17 (d) Except as provided in subdivision (c), any information that
18 has been designated as a trade secret by a petroleum refinery
19 employer shall not be released to any member of the public, except
20 that such information may be disclosed to other officers or
21 employees of the division when relevant in any proceeding of the
22 division.

23 (e) (1) The petroleum refinery employer filing an action
24 pursuant to paragraph (2) of subdivision (c) shall provide notice
25 of the action to the person requesting the release of the information
26 at the same time that the defendant in the action is served.

27 (2) A person who has requested the release of information that
28 includes information that the petroleum refinery employer has
29 notified the division is a trade secret pursuant to paragraph (1) of
30 subdivision (b) may intervene in an action by the petroleum
31 refinery employer filed pursuant to paragraph (2) of subdivision
32 (c). The court shall permit that person to intervene.

33 (f) The public agency shall not bear the court costs for any party
34 named in litigation filed pursuant to this section.

35 (g) This section shall not be construed to prohibit the exchange
36 of trade secrets between local, state, or federal public agencies or
37 state officials when those trade secrets are relevant and reasonably
38 necessary to the exercise of their authority.

39 (h) If the person requesting the release of information identified
40 by a petroleum refinery employer as a trade secret files an action

1 against the division to order disclosure of that information, the
2 division shall promptly notify the petroleum refinery employer of
3 ~~the action.~~ *in writing of the action by certified mail, return receipt*
4 *requested.* The petroleum refinery employer may intervene in an
5 action filed by the person requesting the release of trade secrets
6 identified by the petroleum refinery employer. The court shall
7 permit the petroleum refinery employer to intervene.

8 (i) An officer or employee of the division who, by virtue of that
9 employment or official position, has possession of, or has access
10 to, trade secret information, and who, knowing that disclosure of
11 the information to the general public is prohibited by this section,
12 knowingly and willfully discloses the information in any manner
13 to a person he or she knows is not entitled to receive it, is guilty
14 of a misdemeanor. A contractor with the division and an employee
15 of the contractor, who has been furnished information as authorized
16 by this section, shall be considered an employee of the division
17 for purposes of this section.